

EXHIBIT 1

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

ANDREW L. COLBORN,

Plaintiff,

-vs-

Case No. 19-CV-0484

NETFLIX, INC., et al.,

Defendants.

* * * * CONFIDENTIAL * * * *

Video-Recorded Examination of
KENNETH PETERSEN, taken at the instance of the
Defendants, under and pursuant to the Federal Rules
of Civil Procedure, before Sarah M. Gilkay, a
Certified Realtime Reporter, Registered Merit
Reporter, and Notary Public in and for the State of
Wisconsin, at GODFREY & KAHN, S.C., 833 East Michigan
Street, Suite 1800, Milwaukee, Wisconsin, on
May 19th, 2022, commencing at 10:14 a.m. and
concluding at 2:45 p.m.

Job No. CS5223455

1 APPEARANCES IN PERSON:

2 SCHOTT, BUBLITZ & ENGEL, S.C., by
3 Ms. April Rockstead Barker
4 640 West Moreland Boulevard
5 Waukesha, Wisconsin 53188
6 Appeared on behalf of the Plaintiff.

7 GODFREY & KAHN, S.C., by
8 Mr. James A. Friedman
9 One East Main Street, Suite 500
10 Madison, Wisconsin 53703
11 Appeared on behalf of the Defendants.

12 APPEARANCES VIA ZOOM VIDEOCONFERENCE:

13 GRIESBACH LAW OFFICES, LLC, by
14 Mr. Michael Griesbach
15 830 North 12th Street
16 Manitowoc, Wisconsin 54220
17 Appeared via Zoom on behalf of the Plaintiff.

18 BALLARD SPAHR, LLP, by
19 Mr. Matthew E. Kelley
20 1909 K Street, NW, 12th Floor
21 Washington, DC 20006
22 Appeared via Zoom on behalf of the Defendant
23 Netflix, Incorporated.

24 JASSY VICK CAROLAN, LLP, by
25 Mr. Kevin L. Vick
Ms. Meghan Fenzel
355 S. Grand Avenue, Suite 2450
Los Angeles, California 90071
Appeared via Zoom on behalf of the Defendants
Chrome Media, Laura Ricciardi, and Moira Demos.

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A L S O P R E S E N T

Mr. Dalton Clements, videographer, via Zoom
Ms. Laura Ricciardi, via Zoom
Ms. Moira Demos, via Zoom

1 BY MR. VICK:

2 Q So the -- the contemporaneous reporting, was
3 that important for purposes of accuracy?

4 A Yes.

5 MS. BARKER: Same objections.

6 BY MR. VICK:

7 Q Do the prosecutors rely on the officers' reports
8 to then help prove their cases that they might
9 bring?

10 MS. BARKER: Objection. Foundation.
11 Incomplete hypothetical.

12 THE WITNESS: I believe so.

13 BY MR. VICK:

14 Q Did poor report writing undermine the
15 prosecutor's ability to present their case
16 against a suspect?

17 MS. BARKER: Objection. Incomplete
18 hypothetical. Lack of foundation. Calls for a
19 legal conclusion.

20 THE WITNESS: Yes.

21 BY MR. VICK:

22 Q If an officer had located evidence that he
23 thought was potentially important to an ongoing
24 murder investigation, would you expect that
25 officer to prepare a report about that by the

1 Zoom gallery, and I saw them both drop.

2 BY MR. VICK:

3 Q So looking down a little bit lower,
4 Sheriff Petersen --

5 A Yep.

6 Q -- do you see where there is -- in green there
7 is a response that's on the right and it says
8 "Andrew Colborn@co.manitowoc.wi.us"?

9 A Yes.

10 Q And the response there is "I think it's a great
11 idea. I would need to run this past the
12 sheriff. That may or may not be a problem. I
13 will need a day or two to get back to you.
14 Okay?"

15 Did I read that correctly?

16 A Yes.

17 Q Was it your experience that employees of the
18 Sheriff's Office would check with the sheriff
19 before they would agree to appear in a
20 television program related to a case that the
21 Sheriff's Office had handled?

22 A I would think it wouldn't be allowed.

23 Q Why not?

24 A It goes against everything we teach them.

25 Q What specifically does it go against that you

1 teach them?

2 A We don't try a case in public.

3 Q What about if it was a case that had already
4 been completed?

5 A It would depend on whatever the court ordered.

6 Q What if it was a case in which a criminal
7 defendant had been convicted but there were
8 ongoing post-conviction legal proceedings still
9 continuing?

10 A The answer would be "no."

11 Q Why would the answer be "no"?

12 A Because all it's doing is muddying up the waters
13 for the appeals.

14 Q Scrolling down to the next page -- I'm sorry. I
15 jumped too far. Please -- yeah, stop there,
16 Meghan. Thank you.

17 After the response from Mr. Colborn --
18 I'm still on the first page, Sheriff Petersen.

19 A Okay.

20 Q I misspoke and jumped ahead. I'm looking at
21 those bottom two statements or little bubbles
22 for the texts on the first page from Ken Kratz.
23 The first one says "Okay, Andy. We will have a
24 great trip. They provide a limo and really are
25 nice people. I'm happy to share with Robbie an

1 Q And were they subject to the same policies and
2 practices as the sheriff's department?

3 MS. BARKER: Object to foundation.

4 THE WITNESS: With the exception of
5 the firearms, because most of them were unarmed.

6 BY MR. VICK:

7 Q Besides that, would the answer be yes?

8 A Yes.

9 MS. BARKER: Objection. Vague.

10 BY MR. VICK:

11 Q And you would know that based upon the fact that
12 you were the sheriff who was ultimately
13 responsible for the jail; right?

14 A Right.

15 MS. BARKER: Objection.

16 THE WITNESS: We had -- there was a --

17 BY MR. VICK:

18 Q And who --

19 A There was a policy and procedure manual, and it
20 addressed the entire department.

21 Q Okay. Did you personally work with
22 Andrew Colborn?

23 A No.

24 Q Did you have contact with Andrew Colborn when
25 you were both working in the sheriff's

1 department?

2 A On a very limited basis.

3 Q Under what circumstances would you have contact
4 with him?

5 A Well, at one point he came with Lt. Lenk to my
6 office talking about somebody confessing to
7 Steven -- or to the Beerntsen case, and he
8 wanted to know how to handle it.

9 Q Let's talk about the Beerntsen case just for a
10 little bit.

11 After Mr. Avery was released, were you
12 involved in any investigations related to his
13 wrongful conviction for Penny Beerntsen's
14 assault and his subsequent exoneration?

15 A No.

16 Q Were you involved in any reviews related to
17 those subjects having to do with the sheriff's
18 department?

19 A No.

20 Q I apologize. One sec.

21 We talked earlier about Steven Avery's
22 civil lawsuit that he brought against the
23 County, former Sheriff Kocourek, and I believe
24 also former District Attorney Vogel; right?

25 A Yes.

1 Q And when did you know that that conversation had
2 occurred?

3 A Somewhere in the '90s.

4 Q What had you heard about that conversation?

5 A That somebody had indicated he overheard
6 somebody in Brown County saying that they were
7 involved and whatever. It's one of those
8 jailhouse conversation-type things.

9 Q Do you know whether anything was done by
10 Sheriff Kocourek in response to his receiving
11 information about that jailhouse conversation?

12 A No.

13 MS. BARKER: Objection.

14 THE WITNESS: I have no idea.

15 MS. BARKER: Foundation. Assumes
16 facts.

17 BY MR. VICK:

18 Q Did you ever speak to Sheriff Kocourek about
19 that subject?

20 A No.

21 Q Did you ever speak to other people in Manitowoc
22 County Sheriff's Office regarding the subject?

23 A No.

24 Q Do you have any recollection of what you
25 discussed with Mr. Colborn and Mr. Lenk on that

1 occasion that they came to talk to you about a
2 call that Mr. Colborn received in the '90s?

3 A Basically the same thing as what it says here.

4 Q So what's reflected in Exhibit 1007 is
5 consistent with your recollection of what
6 Mr. Colborn and Mr. Lenk told you at that
7 meeting that you had with them?

8 A Yes.

9 Q What was your reaction at that meeting when
10 Mr. Lenk and Mr. Colborn told you this?

11 A I told them to document the information received
12 and to put it with the investigative file.

13 Q Did you ask them why they had not come to you
14 earlier with this information?

15 A No. This was about the same time that he was
16 being released.

17 Q Did you ask Mr. Colborn why -- if he had
18 prepared a report regarding the call
19 contemporaneously with it happening back in the
20 mid-'90s?

21 A No. I didn't know it was him.

22 Q At that point when he and Mr. Lenk came to you
23 and met with you, did you say something along
24 the lines of "Sgt. Colborn, did you prepare a
25 report of this back in the mid-'90s at the

1 Q During that conversation, did you ask them
2 whether either of them had written a report back
3 in 1994 and '95 regarding the telephone call
4 that Mr. Colborn received?

5 A I don't recall.

6 Q Would you have expected Mr. Colborn to have
7 prepared a report regarding his receipt of that
8 phone call?

9 A Yes.

10 Q Did you ask Mr. Lenk and Mr. Colborn to prepare
11 any reports --

12 A Yes.

13 Q -- at that time in 2003?

14 A Yes.

15 Q Did you ask Mr. Colborn whether he had followed
16 up with anyone in the sheriff's department back
17 in 1994 and '95 regarding the call?

18 A No, because that was the one where I was --
19 where Kocourek was handling it in the '95, '96
20 time frame.

21 Q And let's -- continuing on in this document,
22 Exhibit 1008, please look on page 33 of the
23 document itself, line 20.

24 MS. BARKER: I'm just going to object
25 that I think the witness isn't being offered an

1 BY MR. VICK:

2 Q Yes. Please stop at line 19 on page 34.

3 A 19. Okay. All right.

4 Q And have you finished, Mr. Petersen?

5 A Yes.

6 Q So is your present understanding consistent with
7 your testimony that's reflected in what you just
8 read?

9 A Yes.

10 Q And at the end you mentioned that you directed
11 Mr. Colborn to prepare a statement; right?

12 A Yes.

13 Q And that it would be stored in a vault; correct?

14 A Yes. That's where the file was.

15 Q Did you ever hear that Sgt. Colborn contacted
16 former Sheriff Kocourek in this same time period
17 of 2003?

18 A I have no idea.

19 Q Did you contact Sheriff Kocourek in this time
20 period of 2003 regarding the subject matter?

21 A No.

22 Q Why -- or you mentioned that the case file for
23 Steven Avery was in the vault; is that right?

24 A Yes.

25 Q Was that typical, for case files for an old

1 Q Are you ready, Sheriff Petersen?

2 A Sure. Yeah.

3 Q Do you understand this to be the statement that
4 Sgt. Colborn prepared in response to your
5 direction to him that he should prepare a
6 statement regarding that 1994 and '95 phone
7 call?

8 A It must be.

9 Q Do you recall if he provided it to you back in
10 2003?

11 A No.

12 Q Is it that you don't recall, or you don't
13 believe that he did?

14 A I don't believe he did.

15 Q Had you asked him to provide it to you?

16 A No. I told him to complete it and put it with
17 the case file, but he did it on a statement.

18 Q That would be in the -- that would be in the
19 safe?

20 A Well, he did it on a statement form. That would
21 be for a witness. What he should have done was
22 it should have been on a regular incident
23 report, and then that would have gone back
24 through the system a second time before it went
25 to the case file.

1 Q Could you please explain to me the difference
2 between incident reports and statements.

3 A Incident reports are numbered. They all -- of
4 course they all follow a sequence. One incident
5 can refer to another incident.

6 This statement doesn't even have an
7 incident number on it, so I don't know how
8 anybody that was going to file it would know
9 where to put it.

10 Q So the absence of the incident number would make
11 it harder for this to be catalogued and located
12 later?

13 A Yes. Very much so.

14 Q And you would have wanted Sgt. Colborn to
15 prepare an incident report that would have made
16 it easier to be catalogued and located later;
17 right?

18 A Yes. It would become a part of that file.

19 Q But instead he prepared this statement, which
20 did not do that; right?

21 A That's correct.

22 Q And you said this statement would then go -- it
23 would go into the case file in the safe?

24 A It would have -- it would, if they could -- if
25 they would be able to identify which case it was

1 going to. He's got no names in here.

2 Q Let's look at -- hold on one second.

3 Would someone in the Manitowoc County
4 Sheriff's Office as a matter of course review an
5 incident report, as compared to a statement?

6 A Yeah. It would go to admin. If it's an
7 incident report, it goes through the system and
8 it's given a status of whether it's active,
9 requires more investigation, or is closed or
10 unfounded.

11 Q And what if it's a statement?

12 A It's just part of the incident, so it just -- it
13 would -- depending on what else is in that
14 incident report.

15 MR. VICK: Meghan, let's look at
16 CHRM00478.

17 (Exhibit 1010 marked for identification.)

18 MS. FENZEL: I'm introducing this as
19 Exhibit 1010.

20 BY MR. VICK:

21 Q Sheriff Petersen --

22 A Yep.

23 Q -- please review this document which has been
24 marked as Exhibit 1010.

25 A Okay. You can move up. Okay.

1 record. The time is 2:25 p.m.

2 (Recess taken.)

3 THE VIDEOGRAPHER: And we are back on
4 the record. The time is 2:32 p.m.

5 BY MR. VICK:

6 Q Sheriff Petersen, you testified previously that
7 you believed that the Teresa Halbach
8 investigation fell -- originally fell into
9 Calumet County maybe based upon where she was
10 based out of; is that right?

11 A Correct.

12 Q Once the body was found in Manitowoc County,
13 would that have normally shifted it over to the
14 Manitowoc County Sheriff's Department as being
15 lead investigators?

16 A It would have under normal conditions, but
17 because of me being recused, it was handed back
18 over to them so that we wouldn't view -- or they
19 wouldn't view it as any improprieties.

20 Q So they found that you had a conflict of
21 interest potentially, and that's why it got sent
22 back to Calumet County?

23 A Both -- both myself and the DA's office.

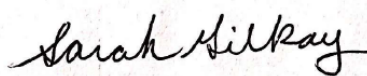
24 Q I see. What about the Sheriff's Department
25 beyond you, was there an understanding that

1 STATE OF WISCONSIN)
) SS:
 2 COUNTY OF MILWAUKEE)
 3

4 I, Sarah M. Gilkay, RPR, RMR, CRR, and
 5 Notary Public in and for the State of Wisconsin,
 6 do hereby certify that the preceding deposition
 7 was recorded by me and reduced to writing under
 8 my personal direction.

9 I further certify that I am not a
 10 relative or employee or attorney or counsel of
 11 any of the parties, or a relative or employee of
 12 such attorney or counsel, or financially
 13 interested directly or indirectly in this
 14 action.

15 In witness whereof, I have hereunder
 16 set my hand and affixed my seal of office on
 17 this 6th day of June, 2022.
 18
 19
 20

21 

22 Sarah Gilkay

RPR, RMR, CRR, and Notary Public

23 My commission expires March 8th, 2026
 24
 25